

From: Jimmy Stobaugh [jstobaugh@telesaurus.com]
Sent: Friday, August 01, 2008 6:08 PM
To: roger.noel@fcc.gov
Cc: arasmussen@hallestill.com; warren.havens@sbcglobal.net; 'Jimmy Stobaugh'
Subject: Re: Notice of Appeal in Court Case No. CIV-463985

Attachments: Notice of Appeal - 7-29-08.pdf
The Commission
Roger Noel, Chief, Mobility Division, WTB, FCC:

Re: Paging Systems, Inc.'s Letters of July 30, 2008 Addressed to Roger Noel regarding (1) File No. 0002147762, (2) File Nos. 0003346539-0003346549, (3) File Nos. 0003377812-0003377814, 0003377819, 0003377822; and Addressed to the Commission regarding (4) WT Docket 04-257, Rulemaking 10743,

To the Commission and Mr. Noel,

I am providing you this email in response to the Paging Systems, Inc. letters noted above. Please see the attached Notice of Appeal that was filed by Plaintiffs with the Court and served on Paging Systems, Inc. on July 29, 2008, regarding Court Case No: CIV-463985, *Warren C. Haven, et al. v. Mobex Network Services, LLC, et al.*, in the Superior Court of the State of California, County of San Mateo.

Plaintiffs have a meritorious case and intend to vigorously pursue it on appeal. A copy of this email and the attached Notice of Appeal will be filed via ULS under the file numbers and proceeding noted above as an update under Section 1.65 for the reasons previously explained, which Paging Systems, Inc. now apparently agrees with.

We note here that, while it is legally incorrect (and contrary to the FCC's and State of California's own rulings in the matters at issue, and highly unlikely to succeed in the California courts of appeal) that PSI argued, to get the dismissal in the trial court, that all claims that touch upon a FCC license or FCC licensee, even if state law claims (including contract interference, tort, antitrust violations, violations of state filing and tax requirements, fraud, etc.) are subject to entire preemption for determination by the Federal Communications Commission. Thus, PSI effectively waives any defense of such claims being before the FCC, and claims to not being subject to proper fact finding formal hearings at the FCC.

Sincerely,

Jimmy Stobaugh, on behalf of
Warren Havens
AMTS Consortium LLC
Telesaurus VPC LLC
Telesaurus Holdings GB LLC
Skybridge Spectrum Foundation
Intelligent Transportation & Monitoring Wireless LLC

Cc: Audrey Rasmussen, counsel to Paging Systems, Inc.
Warren Havens

Certificate of Service

I, Jimmy Stobaugh, certify that I have, on this 1st day of August 2008, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the above email and attached Notice of Appeal to the following:*

Roger Noel, Chief, Mobility Division, WTB
FCC
(via email only)

The Commission
FCC
445 12th Street, S.W.
Washington, DC 20554
(via electronic filing only in WT Docket 04-257, RM-10743)

Audrey P. Rasmussen (counsel to PSI)
Hall, Estill, Hardwick, Gable,
Golden & Nelson, P.C
1120 20th Street, N.W.
Suite 700, North Building
Washington, DC 20036-3406

[\[Filed Electronically. Signature on File.\]](#)

Jimmy Stobaugh

* The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

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 PATRICK J. RICHARD (SBN 131046)
 prichard@nossaman.com
 50 California Street, Thirty-Fourth Floor
 San Francisco, California 94111-4799
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 Facsimile: (415) 398-2438

Counsel for Plaintiffs
 WARREN C. HAVENS, TELESARUS VPC, LLC,
 AMTS CONSORTIUM, LLC, INTELLIGENT
 TRANSPORTATION & MONITORING WIRELESS LLC,
 and TELESARUS HOLDINGS GB LLC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN MATEO -

WARREN C. HAVENS, an individual;
 TELESARUS VPC, LLC, a Delaware Limited
 Liability Company; AMTS CONSORTIUM, LLC,
 a Delaware Limited Liability Company;
 INTELLIGENT TRANSPORTATION
 & MONITORING WIRELESS LLC., a Delaware
 Limited Liability Company; and
 TELESARUS HOLDINGS GB LLC., a
 Delaware Limited Liability Company,

Plaintiffs,

vs.

MOBEX NETWORK SERVICES, LLC, a
 Delaware Limited Liability Company;
 MARITIME COMMUNICATIONS / LAND
 MOBILE, LLC, a Delaware Limited Liability
 Company, PAGING SYSTEMS, INC., a
 California corporation; and DOES 1-100,,

Defendants.

Case No: CIV-463985

**NOTICE OF APPEAL AND ELECTION TO
 PROCEED BY APPENDIX**

ASSIGNED FOR ALL PURPOSES TO:
 HON. CAROL L. MITTLESTEADT

ENDORSED FILED
 SAN MATEO COUNTY

JUL 29 2003

Clerk of the Superior Court
 By Diana Castro
 DEPUTY CLERK

1 **I. NOTICE OF APPEAL (CAL. R. CT. 8.100).**

2 Pursuant to Code of Civil Procedure § 472c and California Rules of Court 8.100 and 8.104,
3 Plaintiffs Warren C. Havens, Telesaurus VPC, LLC, AMTS Consortium, LLC, Intelligent
4 Transportation & Monitoring Wireless LLC, and Telesaurus Holdings GB LLC ("Plaintiffs") appeal
5 from:

- 6 1) The Judgment of Dismissal in Favor of Defendant Paging Systems, Inc., entered with the
7 court on June 30, 2008, ("PSI's Judgment of Dismissal"), Notice of Entry of which was
8 served on July 10, 2008; and
- 9 2) The Judgment of Dismissal in Favor of Defendants Maritime Communications/Land
10 Mobile, LLC., and Mobex Network Services, LLC, entered with this court on July 1,
11 2008 ("Mobex's Judgment of Dismissal"), Notice of Entry of which was served on July
12 9, 2008.

13 **II. NOTICE OF ELECTION TO PROCEED VIA APPENDIX (CAL. R. CT. 8.124).**

14 As permitted by Rule of Court 8.124, Plaintiffs elect to proceed via Appendix instead of by
15 Clerk's Transcript.

16 **III. DESIGNATION OF REPORTER'S TRANSCRIPT (CAL. R. CT. 8.130).**

17 Plaintiffs designate the following Reporter's Transcripts:

- 18 1) Reporter's Transcript regarding the hearing that occurred before the Honorable Carol L.
19 Mittlesteadt, at 10:00 a.m., in Department 1 on February 11, 2008; and
- 20 2) Reporter's Transcript regarding the hearing that occurred before the Honorable Carol L.
21 Mittlesteadt, at 10:00 a.m., in Department 1 on May 12, 2008.

22 **IV. ACCOMPANYING FEES AND DEPOSITS (CAL. R. CT. 8.100).**

23 Plaintiffs submit the following fees and deposits with this Notice and Reporter's-Transcript
24 Designation:

- 25 1) The \$655 filing fee required by Rule of Court 1(b)(1) and Government Code sections
26 68926 and 68926.1(b); and
- 27 2) A \$100 deposit pursuant to Rule of Court 1(b)(2) and Government Code section 68926.1.
28

1
2 Dated: July 28, 2008

NOSSAMAN LLP
PATRICK J. RICHARD

3
4
5 By: 

Patrick J. Richard

Attorneys for Plaintiffs

6 WARREN C. HAVENS, TELES AUUS VPC, LLC, AMTS
7 CONSORTIUM, LLC, INTELLIGENT
8 TRANSPORTATION & MONTORING WIRELESS LLC,
9 and TELES AURUS HOLDINGS GB LLC.

1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of San Francisco, State of California. I am over the age of
4 18 and am not a party to the within action; my business address is c/o Nossaman LLP, 50
California Street, Thirty-Fourth Floor, San Francisco, California 94111-4799.

5 On **July 29, 2008**, I served the foregoing **NOTICE OF APPEAL AND ELECTION TO**
6 **PROCEED BY APPENDIX** on parties to the within action as follows:

- 7 ☒ (By Electronic Service) By emailing true and correct copies to the persons at the
8 electronic notification address(es) shown on the accompanying service list. The
document(s) was/were served electronically and the transmission was reported as
complete and without error.
- 9 ☒ (By U.S. Mail) On the same date, at my said place of business, an original enclosed in a
10 sealed envelope, addressed as shown on the attached service list was placed for
collection and mailing following the usual business practice of my said employer. I am
11 readily familiar with my said employer's business practice for collection and processing
of correspondence for mailing with the United States Postal Service, and, pursuant to that
12 practice, the correspondence would be deposited with the United States Postal Service,
with postage thereon fully prepaid, on the same date at San Francisco, California.

13 **Counsel for Defendant**

14 **Paging Systems, Inc.**

15 Eugene Hahm Esq.
1001 Page Mill Road, Building 2
16 Palo Alto, CA 94304-1006
Phone: (650) 812-1300
17 Fax: (650) 213-0260
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Co-Counsel for Plaintiffs

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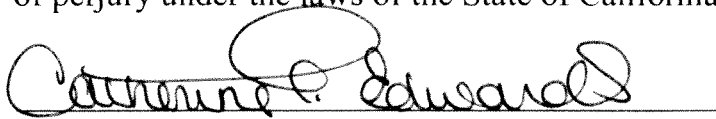
18 **Counsel for Defendant**

19 **Mobex Network Services & Maritime**
20 **Communications/Land Mobile**

21 Anne Hayes Hartman, Esq.
Goodin, MacBride, Squeri, Day & Lamprey
22 505 Sansome Street, 9th Floor
San Francisco, CA 94111
Phone: (415) 392-7900
23 Fax: (415) 398-4321
ahartman@goodinmacbride.com

24 Executed on **July 29, 2008**.

- 25 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that
26 the foregoing is true and correct.

27 
28 Catherine T. Edwards